

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE G.C.BHARUKA

WRIT PETITION NO:16533/1996

BETWEEN:

Ganapati s/o Gundappa Hudgikar,
major, Asst Teacher,
Saraswathi Higher Primary School,
Bidar.

(By Sri Basava Prabhu S.Patil, Adv) ..Petitioner

AND:

1. State of Karnataka
by its Secretary,
Education Department,
Vidhana Soudha,
Bangalore-560 001.
2. The Chief Executive Officer,
Zilla Panchayat, Bidar Dist., Bidar.
3. The Deputy Director of Public Instructions,
Bidar District, Bidar.
4. Sri Saraswathi Education Board,
'Keshava Smruthi', Behind Mahila
Mandal, Bidar-585401, rep by its
Secretary.
(By Sri G.Papi Reddy, AGA for R1-3;) ..Respondent

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Writ petition is filed under Articles 226 & 227
of the Constitution of India with a prayer to direct
R1 to modify their order dt.29.12.94 at Annex-A to the
effect that the petr's appointment is approved with effect
from the date of his appointment i.e. from 31/3/92 & etc.

This petition coming on for order this day the court
made the following:

W.P.16533/96

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O R D E R

Heard the learned counsel for the petitioner and Mrs. V. Vidya, learned H.C.G.P. for the respondents

2. The petitioner is an employee of a Private Educational institution. The relief claimed by him in the present writ petition pertains to his employment. The Division Bench of this Court in W.A. No. 1833 to 1836/95 and connected matters (DD 30.05.1998) has held that even if the private educational institution has been admitted to grant-in-aid under the provisions of the Grant-in-Aid Code by the State government, still no relationship of master and servant between the government and the person like the petitioner comes into being and therefore, the writ petition filed by such an employee is not maintainable under Article 226 of the Constitution of India, since he has effective, efficacious and alternative statutory remedies available under the Karnataka Education Act, 1983 (in short 'the Act').

3. In paragraph 12 of the judgment it has been held that:-

"As regards the locus standi of staff working in the aforesaid educational institutions to maintain the writ petitions, they have got the remedy of appeal under Section 94 of the Education Act against an order of dismissal or removal from service or reduction in rank. Under Section 130, appeal is provided against any order passed by an officer or authority under the Act. Section 131 provides for revision by Government either suo moto or on an application from any person interested. Section 132 of the Education Act provides for review by the State Government either suo moto or on an application received from any person

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interested. The Government is also vested with the power to give direction under Section 133 of the Said Act to make enquiry or take appropriate proceeding by the Commissioner or Director or any other officer not below the rank of District Educational Officer and to submit report. Thus, the Education Act provides for appeal, revision and review in respect of any order and in the absence of any order, the Government can be moved for issuing necessary direction in exercise of its power under Section 133 and the staff can avail the said remedies. Even with regard to payment of salary, what is stated above with regard to the teaching and non-teaching staff applies the other staff also. Without exhausting such alternative remedy, they cannot be permitted to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution."

4. For the aforesaid reasons the writ petition is dismissed on the ground of availability of efficacious and effective alternative remedy. However, all the rights and contentions of the parties on merits are kept open for being agitated before the appropriate statutory authorities. If so advised, the petitioner may avail his statutory remedy by way of filing appeal / revision / application as the case may be under the Act within SIX WEEKS from today and in the event of filing of the same, the concerned authorities will dispose of such appeal / revision / application within THREE months from the date filing thereof. If any such remedy has already been availed, then the same should be disposed of within THREE months from the date of communication of this order.

jsk/-



Sd/-
JUDGE